

**THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION**

THE UNITED STATES OF AMERICA,	)	CIVIL ACTION NO. 3:11-cv-0141
THE STATE OF COLORADO,	)	
THE STATE OF GEORGIA,	)	
THE STATE OF NORTH CAROLINA	)	CASE UNDER SEAL PURSUANT
THE STATE OF TEXAS, and	)	TO MARCH 25, 2011 ORDER
THE COMMONWEALTH OF VIRGINIA,	)	
<i>EX REL.</i> ANTONIO SAIDIANI	)	
	)	DO NOT PLACE IN PRESS BOX
Plaintiffs,	)	DO NOT ENTER ON PACER
	)	
v.	)	
	)	JURY TRIAL DEMANDED
NEXTCARE, INC.,	)	
NEXTCARE ARIZONA LLC,	)	
COLORADO URGENT CARE, LLC,	)	
NEXTCARE GEORGIA LLC,	)	
NAEXTCARE NORTH CAROLINA LLC,	)	
JOHN SHUFELDT, and	)	
DOES 1 THROUGH 25, INCLUSIVE,	)	
	)	
Defendants.	)	

**MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF'S  
COUNSEL'S MOTION FOR ATTORNEY'S FEES, COSTS, AND EXPENSES**

Counsel for Plaintiff Saidiani submits this memorandum of law in support of his motion for an award of attorney's fees, costs, and expenses for professional services rendered in connection with the above-caption action.

**FACTS**

1) On December 21, 2009, Lorin Granger filed a Federal False Claims Act ("Federal FCA") lawsuit against NextCare, Inc. in the Western District of North Carolina captioned *United States ex rel. Granger v. NextCare, Inc.*, Case Number 3:09-CV-535-FDW-DCK (the "Granger"

suit). The Granger suit named the United States as a plaintiff. It did not name any states as plaintiffs. The suit was filed under seal and remains under seal.

2) Unaware of the Granger suit, on March 24, 2011, Antonio Saidiani, by and through the undersigned counsel, filed an FCA lawsuit against NextCare, Inc. in the Western District of North Carolina captioned *United States, Colorado, Georgia, North Carolina, Texas, and Virginia ex rel. Saidiani v. NextCare, Inc.*, Case Number 3:11-EV-0141 (the “Saidiani” suit).

3) Unlike the initial Granger complaint, the Saidiani complaint named the above-listed states as plaintiffs. The suit alleged that NextCare submitted false claims to the named states and the federal government (collectively, the “Government Plaintiffs”).

4) The Government Plaintiffs investigated the allegations. The State of North Carolina has indicated that it is intervening in the Saidiani suit. The United States has also indicated that it is intervening in the Saidiani suit. The States of Georgia, Texas, Virginia, and Colorado have declined to intervene in the Saidiani suit.

5) In the latter part of 2011, Saidiani and Granger entered into an agreement to share any proceeds from either the Granger suit or the Saidiani suit (this is a common practice in FCA litigation).

6) Subsequently, the United States negotiated an agreement with NextCare to resolve the Saidiani and Granger suits (the “Federal Agreement”). Granger negotiated an agreement with NextCare with respect to attorney’s fees.

7) Saidiani and NextCare could not reach agreement regarding attorney’s fees. Accordingly, the Federal Agreement expressly reserves Saidiani’s right to pursue NextCare for attorney’s fees under the Federal FCA.

8) Subsequently, the above-named states, Saidiani, and Granger entered an agreement with respect to the State FCA claims (“State Agreement”). Consistent with the sharing agreement between Saidiani and Granger, Saidiani and Granger will share the proceeds of the State FCA claim.

### **DISCUSSION**

9) Under the Federal FCA, 31 U.S.C. 3129 *et seq.*, a private plaintiff who brings a suit that leads to a judgment or a settlement is entitled to a portion of the proceeds, and reasonable expenses, costs, and attorney’s fees. 31 U.S.C. § 3130(d).

10) All of the above-named states have enacted statutes which are substantially similar to the Federal FCA. Colorado’s statute is known as the Colorado Medical Assistance Act, Colo. Rev. Stat. 25.5-4-305 *et seq.* Georgia’s statute is known as the State False Medicaid Claims Act, Ga. Code Ann. 49-4-168 *et seq.* North Carolina’s statute is known as the False Claims Act, N.C. Gen. Stat. 1-605 *et seq.* Texas’ statute is known as Medicaid Fraud Prevention, Tex. Hum. Res. Code Ann. 36.001 *et seq.* Virginia’s statute is known as the Virginia Fraud Against Taxpayers Act, Va. Code Ann. 8.01-216.1 *et seq.* (hereinafter the “State FCA’s”).

11) Each of the State FCA’s provides that a private plaintiff who brings a suit that leads to a judgment or a settlement is statutorily entitled to a portion of the proceeds, and reasonable expenses, costs, and attorney’s fees. *See* Colo. Rev. Stat. §§ 25.5-4-306(4)(a)(III) (b); Ga. Code Ann. §§ 49-4-168.2(i)(1)(2); N.C. Gen. Stat. §§ 1-610(d)(e); Tex. Hum. Res. Code Ann. § 36.110(c); and Va. Code Ann. §§ 8.01-216.7(A)(B).

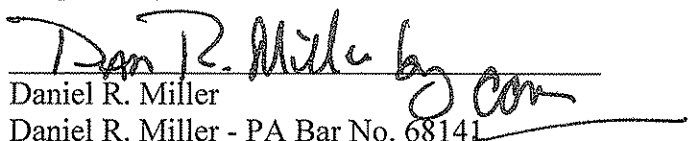
12) All of the State FCA’s contain so-called “first to file” provisions. *See* Colorado: Colo. Rev. Stat. § 25.5-4-306(2)(e); Georgia: Ga. Code Ann. § 49-4-168.2(c)(6); N.C. Gen. Stat. § 1-608(b)(5); Tex. Hum. Res. Code Ann. § 36.106; and Va. Code Ann. § 8.01-216.5(E).

## CONCLUSION

13) With respect to all of the above-named states, Saidiani's complaint was filed first. That suit has subsequently been settled, with Saidiani agreeing to release certain FCA claims against NextCare in return for a portion of the proceeds of the suit. Therefore, under the State FCA's, NextCare has a statutory obligation to pay Saidiani's attorney's fees, costs, and expenses.

Dated: June 20, 2012

Respectfully submitted,

  
Daniel R. Miller

Daniel R. Miller - PA Bar No. 68141

Attorney for Plaintiff

Berger & Montague, P.C.

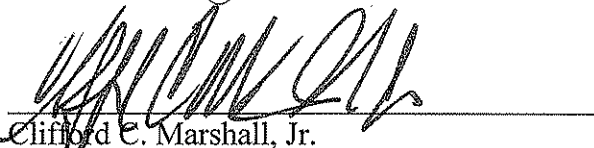
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## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day caused a copy of Motion for Attorney's Fees, Costs, and Expenses and Memorandum of Law in Support of Plaintiff's Counsel's Motion for Attorney's Fees, Costs, and Expenses to be served via first-class mail, postage prepaid, to the following counsel:

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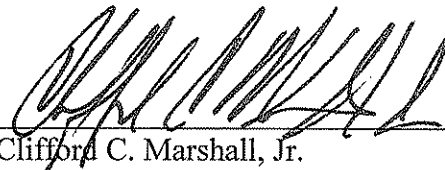
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